Mohd Noor bin Abdullah v Nordin bin Haji Zakaria, Timbalan Ketua Polis, Kelantan & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-21-166 OF 1997
KAMALANATHAN RATNAM J
23 AUGUST 1999

Public Servants *— Dismissal from Public Force — Plaintiff not informed of possibility of dismissal from service — Whether in breach of Regulations — Public Officers (Conduct and Discipline) Regulations 1993 reg 28 — Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 reg 2*

The plaintiff was a Lance/Kpl in the Polis Di-Raja Malaysia (PDRM). He was called upon to attend orderly room proceedings on 20 March 1997 to answer four charges under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 ('the regulation'). The plaintiff was subsequently dismissed based on findings of guilt on the first, third and fourth charges respectively. The plaintiff prayed for a declaration that the first defendant has acted in breach of reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 as the plaintiff was not informed of the possibility of dismissal from service.

Held, dismissing the application:

(1) The provision of reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) necessitated that the officer who is to be dismissed or reduced in rank had to be informed of the possible sentence if found guilty and that this applied also to junior police officers and constables. The plaintiff did not plead guilty to the charge but instead claimed trial to the charge. At this stage, the plaintiff need not be informed of the possible punishment or sentence because at this stage he is yet to be found guilty by the first defendant (see p 127B–C, G).

(2) Further, considering the surrounding facts of this case, the court ought to draw an inference that the plaintiff well knew the possible sentence, if found guilty. The plaintiff took his case seriously by engaging a counsel and claiming trial to all the four charges (see p 128C). The charges clearly show that the plaintiff if he is found guilty, would face the possible sentences in reg 2 of the Regulation. The said sentences range from reprimand to dismissal (see p 128E).

[Bahasa Malaysia summary

Plaintif adalah seorang lans koperal di Polis Di-Raja Malaysia ('PDRM'). Beliau dipanggil untuk menghadiri suatu prosiding siasatan tertutup (orderly room proceedings) pada 20 Mac 1997 untuk menjawab empat pertuduhan di bawah Peraturan Polis

(Kelakuan dan Disiplin) (Pegawai Polis dan Konstabel) 1970 ('peraturan tersebut'). Plaintif kemudiannya dipecat berdasarkan penemuan bersalah untuk pertuduhan yang pertama, ketiga dan keempat masing-masing. Plaintif telah memohon untuk suatu deklarasi bahawa defendan pertama telah bertindak melanggar peraturan 28 Peraturan Pegawai Awam (Kelakuan dan Disiplin) 1993 kerana plaintif tidak diberitahu tentang kemungkinan pemecatan daripada perkhidmatan.

Diputuskan, menolak pemohonan tersebut:

(1) Peruntukan peraturan 28 Pegawai Awam (Kelakuan dan Disiplin) 1993 (Bab D) memerlukan bahawa seorang pegawai yang akan dipecat atau diturun pangkat mesti diberitahu tentang hukuman yang mungkin dikenakan jika didapati bersalah dan ini terpakai kepada pegawai-pegawai polis dan konstabel-konstabel yang muda. Plaintif tidak mengaku bersalah tetapi sebaliknya meminta untuk dibicarakan untuk pertuduhan tersebut. Di peringkat ini, plaintif tidak perlu diberitahu mengenai hukuman yang mungkin dikenakan oleh kerana pada peringkat ini beliau belum didapati bersalah oleh defendan pertama (lihat ms 127B–C, G).

(2) Selanjutnya, di dalam mempertimbangkan latar belakang fakta kes ini, mahkamah patut membuat inferens bahawa plaintif tahu benar hukuman yang mungkin dikenakan, jika didapati bersalah. Plaintif menganggap kesnya dengan serius dengan mengambil seorang peguam dan menuntut perbicaraan untuk keempat-empat pertuduhan (lihat ms 1128C). Pertuduhan tersebut jelas menunjukkan bahawa plaintif jika beliau didapati bersalah akan menghadapi kemungkinan hukuman di dalam peraturan 2 peraturan tersebut. Hukuman yang dikatakan boleh berbentuk teguran ke pemecatan (lihat ms 128E).]

Notes

For cases on dismissal of a public servant, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1525–1563.

Cases referred to

Ekambaram a/l Savarimuthi v Ketua Polis Daerah Melaka Tengah & Ors [1997] 2 MLJ 454 (refd)

Legislation referred to

Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 reg 2

Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28

Karpal Singh (*M Manoharan* with him) (*Karpal Singh & Co*) for the plaintiff.

Ahmad Kamal bin Md Shahid (Attorney General's Chambers) for the defendants.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

The plaintiff until his dismissal, was a Lance/Kpl in the Polis Di-Raja Malaysia (PDRM). He was called upon to attend orderly room proceedings on 20 March 1997 to answer four charges under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 ('the Regulation'). As a result, the plaintiff was found guilty on the first, third and fourth charges and acquitted on the second charge. The plaintiff was subsequently dismissed based on his finding of guilt on the first, third and fourth charges respectively.

The claim

The plaintiff in his statement of claim prayed for the following declarations:

(1) A declaration that the first defendant has acted in breach of reg 28 of the Public Officers (Conduct and Discipline) Regulations, 1993.

(2) A declaration that the plaintiff's dismissal from the PDRM is against the established rules of natural justice.

(3) A declaration that the dismissal of the plaintiff from the PDRM by the first defendant on 22 March 1997 (actually it is on 20 March 1997) is null and void, ineffective and of no effect and that the plaintiff is still a member of the PRDM.

The plaintiff also prayed for other consequential reliefs such as an order for an account to be taken of all salaries, emoluments and other benefits the plaintiff is entitled to and that the same be paid to him, for damages to be assessed with interest and costs. There was also a prayer for such other relief the court deemed fit and proper.

Findings of the court

The plaintiff only raised two issues as gleaned from his statement of claim:

(1) That the plaintiff was not given an opportunity to make a plea in mitigation before the punishment of dismissal was imposed upon him.

(2) That the plaintiff was not informed of the possibility of his dismissal from the service.

On the first issue, the plaintiff had admitted under cross-examination that he was indeed given an opportunity to make a plea in mitigation before sentence was meted out to him. Needless to say on this admission, counsel for the plaintiff did not pursue this issue in his submission. I therefore take it that it has been abandoned.

Not being informed of the possibility of dismissal from service

The plaintiff contended that by not informing him of the possibility of dismissal, the first defendant was in breach of the audi alteram partem rule and accordingly, rendering the plaintiff's dismissal null and void. The plaintiff relied on *Ekambaram a/l Savarimuthi v Ketua Polis Daerah Melaka Tengah & Ors* [1997] 2 MLJ 454.

In *Ekambaram* the plaintiff not being informed of the possibility that he would be dismissed in the event of being found guilty of the charge, pleaded guilty to the charge. Suriyadi J held in that case that by the addendum in A 207, the provision of reg 28 of the Public Officers (Conduct and Discipline) Regulations, 1993 (Cap D) necessitated that the officer who is to be dismissed or reduced in rank had to be informed of the possible sentence if found guilty and that this applied also to junior police officers and constables. He concluded that by not informing the applicant of the possible dismissal, the tribunal was in breach of the audi alteram partem rule.

Regulation 28(1) reads as follows:

> The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a prima facie case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

The addendum in A207 reads as follows:

> However, where certain provision under General Orders Cap 'D' are not expressly provided for under the Police Regulations 1970, such provisions under General Orders Cap 'D' shall be applicable to Junior Police Officers and Constables.

In the case before me, the plaintiff did not plead guilty to the charge but instead claimed trial to the charge. Witnesses were called to testify to support the charge. It is my judgment therefore that at this stage, the plaintiff need not be informed of the possible punishment or sentence because at this stage he is yet to be found guilty by the first defendant. It is only when the plaintiff is found guilty by the first defendant after he had entered his defence, is the plaintiff to be informed of the possible sentence.

In fact, DW1, who held the enquiry, testified as follows:

> S Adakah anda memaklumkan kepada plaintif sebelum beliau membuat rayuan di dalam mitigasi hukuman yang boleh dijatuhkan ke atasnya setelah plaintif didapati bersalah ke atas pertuduhan pertama, ketiga dan keempat?

J Ya. Saya ada beritahu plaintif bahawa saya mempunyai kuasa untuk menjatuhkan serendah-rendah hukuman daripada celaan sehinggalah sampai buang kerja.

The above question and answer clearly show that the first defendant has complied with all the required procedures pursuant to reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) and the Regulations. Therefore, there is no question of the first defendant being in breach of the audi alteram partem rule. *Ekambaram*'s case, among others, expects the 'Pihak Berkuasa Tatatertib' (the first defendant in this case) to inform an officer who is to be dismissed or reduced in rank pursuant to a disciplinary proceeding, of the possible sentence if found guilty. This is exactly what the first defendant has done.

Further, considering the surrounding facts of this case, I ought to draw an inference that the plaintiff well knew the possible sentence, if found guilty. The plaintiff took his case seriously by engaging a counsel and claiming trial to all the four charges. Had he not known of the outcome if found guilty, he would not have claimed trial to the charges and engaged a counsel to represent him during the orderly room proceedings.

Unlike *Ekambaram*, the plaintiff in this case had the benefit of having a counsel who surely would have advised him about the case and its outcome, that is, the possible sentence, if found guilty. If at all the plaintiff was prejudiced because his counsel did not inform him of the effect or outcome of the orderly room proceedings or of the possible sentence if found guilty as alleged by him, the fault lies solely with his counsel. Moreover the charges clearly show that the plaintiff if he is found guilty, would face the possible sentences in reg 2 of the Regulations. The said sentences range from reprimand to dismissal.

It is my judgment therefore that the first defendant has followed all the procedures as laid down in reg 28 of the Public Officers (Conduct and Discipline) Regulations, 1993 (Cap D) and the Regulations. The plaintiff's action therefore stands dismissed with costs.

Application dismissed.

Reported by Benjamin Yong